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H. D. Woods

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considers adverse shifts in final demand as a form of technological change then the firms experiencing this shift have no profits whatsoever for providing assistance, i.e. as in coal mining.

CONCLUSION

If nothing else, these comments on an altered collective bargaining process should raise serious questions as to what results the right to re-open and strike will have. It certainly is not evident that a change in the bargaining process is going to yield a pronounced increase in worker protection. But even granted that it does it is not clear cut that these gains will exceed the costs arising from the instability and uncertainty created. In effect we may be seriously impairing the collective bargaining process, which works well for other issues, in order to make questionable and marginal gains in the area of adjustment to change, an issue perhaps not suited to the collective bargaining process. If adjustment to technological change is truly a serious social issue it should not be attacked indirectly through some process that yields uncertain benefits and almost certainly some costs. Surely, David killed Goliath with a small slingshot but one cannot be confident that this outcome would always occur.

Some Comments on the Task Force on Labour Relations, Freedman, and Reopeners : A Reply to David P. Ross

H. D. Woods

David P. Ross in his article published in this issue, is critical of the Report of the Task Force on Labour Relations with regard to its recommendations for dealing with the problem of technological change. This answering comment is the sole responsibility of the writer and in no way is it to be taken to express the views of other members of the Task Force. With much of what Ross says there can be no serious quarrel and indeed a large part of this article is not inconsistent with the Task Force Report. However, he seems to have misread or misunderstood the intention of the recommendations in the report dealing with industrial conversion, the term used in the report to encompass technological change.

Ross is at great pains to find some justification for public assumption of some responsibility for resolving the impact of technological displacement. He states : « If government is committed to stimulating the gains from technological change, should it not then be partially responsible for the losses ? »

This is a strange argument. It places a responsibility on the government *because the government has been engaged in stimulating the economy*. Presumably then the government would not have any responsibility to the man displaced through technological change which could not be related to the government's involvement in stimulating change and a high level of economic activity or economic growth. One might equally argue that government has no responsibility to supply educational services to its citizens unless it can be shown that the illiteracy of children is in some manner caused by government activities. To the employed man it would make no difference whether the government was bearish or bullish toward the economy. If he is a victim of technological change, he needs help. The Task Force made no allocation of responsibility but did recognize a primary role for public in three areas ; more emphasis on education for adjustment ; a high level of employment ; and an active labour market policy to facilitate mobility. All of this was related to the needs of the victims of technological change. And the important issue is how these needs can be met most efficiently, taking into account the relationship between technological change and the social goal of a rising standard of living. The Task Force report gives the major role to public authorities and public programs without absolving the private parties entirely. It recognizes a place for collective bargaining.

Ross recognizes three board approaches to the solution to the problem of technological change and its impact on employees. The first is to change the legislative context within which bargaining takes place in the hope that the private parties will be encouraged to solve the problem by negotiation. The second approach is to recognize that collectively bargained solutions are not applicable to all workers and therefore public intervention is required to impose standards and minimum assistance provisions for all. In other words the private parties should be told what they must do. The third would emphasize public assistance by offering compensation after the private sector has made all its decisions. As Ross points out, the Task Force report supports the use of all three. It is the particular proposal made by the Task Force under the umbrella of his first board approach — change the legislation to encourage the parties to resolve the difficulties themselves — that draws his fire if criticism, and which in the opinion of this writer he seems to have misunderstood. Before examining his criticisms it is necessary to draw attention to Ross' misstatement of the Freedman report.

Ross makes the statement : « Justice Freedman has recommended postponing major changes until the open period of the agreement ». This

is not strictly correct since the Freedman Report recommended only that, if an arbitrator ruled that the proposed innovation was a major one, the employer could introduce the change if he got the union's approval. In other words, Freedman did not recommend a bar on all major change during the life of an agreement, but he did propose to give the union a veto on such changes. Under his proposal, it would have been possible for a union to permit a major change, perhaps only in return for something desired by the union as a *quid pro quo*. Freedman provided for negotiation but with the strike sanction transformed into a union veto sanction. The Task Force expressed serious doubts about the value of the general application of the Freedman formula and instead chose to support policies which would protect management in its freedom to make changes which in themselves are not in violation of a collective agreement, place the major responsibility on government agencies, and retain a role for collective bargaining. The report states : « within the public policy framework we recommend, collective bargaining could play a constructive supplementary role by helping to adapt public policies to particular situation. Until such a framework (of public policy) is completed, collective bargaining must perforce play an even greater part in developing appropriate adjustment procedures and approaches ». It is this continuing role for collective bargaining and the proposals to give the parties the power to break out of the legislative straight-jacket in which they are now encased under the Industrial Relations and Disputes Investigation Act which Ross finds objectionable. His attack on the reopening proposal contains nine points. These require examination.

Ross' contention that there is nothing at present to prohibit unions from including in agreements, programs for adjusting workers to technological displacement is correct, but this information in no way diminishes the value of the proposal. The Task Force recommendation did not propose that the present barrier to strike action during the life of an agreement should be eliminated, but that the law should be relaxed to permit the parties mutually to opt out of this restraint at the time the collective agreement is negotiated. The proposal would give to the employer confronted with a union demand during negotiations for an industrial conversion clause three options ; he could grant the requested clause to the union ; he could deny the request and offer to agree to a reopener on the conversion issue and take his chance on a strike during the life of the agreement ; or he could grant neither and run the risk that the issue of conversion either by itself or along with other rejected demands would bring on a strike directly. The union on the other side of the table would

be concerned with the same options. Those employers who wanted to maximize certainty would probably choose to negotiate a clause covering the conversion issue and thus preserve the no-strike provision of the law. Those who preferred to avoid specific commitments in advance might be prepared to accept a reopener and negotiation clause and the possibility of a strike. Those strongly opposed either to a substantive provision in advance or a procedural commitment to negotiate in a context of a strike possibility if the issue emerged during the life of the agreement could take such a position and take a chance on a strike in the interest bargaining period. The existence of these options would in fact assist collective bargaining because of the increase in the number of alternative settlements available. The Task Force saw this provision as an additional instrument in the hands of a conciliation officer confronted with a strong demand from a union for protection from the impact of technological change during the life of the agreement. It was fully aware that the law now permits a union to strike during the negotiation period to force an employer to accept obligations regarding industrial conversion possibilities, but it reasoned that considering the nature of the problem itself, there would be an advantage to granting the parties the option by agreement to transform bargaining in advance for a solution to problems yet unknown to ad hoc negotiations when the substantive issue was itself on the table.

Ross supports his position by suggesting pension bargaining as an analogy to bargaining over the possibility of technological change. The analogy is false. Pension plans are instruments for distributing income over the working lives of employees and on throughout the retirement years as well. It can be based on actuarial principles and relates to all employees who survive to the retirement period. The impact of industrial conversion is an insurance against the adversities flowing from managerial decisions and is critical for those directly victimized. It may never be applied to considerable numbers of the work force. Furthermore, management controls the changes involved as to kind and timing. Because of this and the impossibility of knowing what technologies may become available after an agreement is signed, the level of uncertainty is high. The justification of reopening and renegotiation still stands.

The statement by Ross that « The real purpose of the reopener of course is simply to give the union an increase in bargaining power » is largely answered in the foregoing analysis. The real purpose is to give the parties alternatives not now available to them, in the belief that they will engage in serious and realistic bargaining.

Ross misunderstands the recommendation when he suggests that it attempts « to influence the outcome of private bargaining . . . » Again as already explained, the proposal is procedural and does not in any way steer the negotiation in a given direction, with the exception that it might very well reduce industrial tensions and strikes – either legal or illegal – by providing the additional alternatives to the strike.

The statement that « technological change is an important term of work that merits *special* consideration » calling for special legislation affecting bargaining procedures is correct, but the conclusion that this logically justifies solving the problem by additions to industrial standards legislation is a non-sequitor which indicates a lack of understanding of the role of collective bargaining in our industrial relations system. One of the virtues of collective bargaining is that it allows the private parties to design their own standards to suit their own specific needs. Of course there may be a case for public standards of insurance against the impact of change, but it does not follow directly from the fact of a serious displacement problem. Such legislation would be hard to resign simply because it might be much too blunt an instrument to apply generally, as the Federal hours of work standards have been found to be. Perhaps the combination of public programs and collective bargaining is safer. The recently announced Federal program for the rationalization of the textile industry at first glance looks like an imaginative straw in the wind. Pushing Ross to the logical conclusion of his argument, collective bargaining would become unnecessary because we have minimum wage laws, hours legislation, holiday and vacation standard, and so on. There is much overlapping of public requirement and private agreement areas, and there probably will continue to be as long as our liberal democratic pluralistic system continues. More specifically special legislation or procedures in collective bargaining is needed for the conversion problem because the disturbing changes emerge into view *after* the right to negotiate has been temporarily lost and frozen into the agreement.

Ross next, by an hypothetical example, demonstrates that an employer who signs an agreement at a given point in time and later has it reopened may be confronted with an increased cost which he had a right not to expect. A marginal employer could be forced out of business. But surely this ignores a number of realities. If an employer should, under the Task Force's proposed formula, agree to a possible reopener on technological change he would, as a prudent bargainer calculate the probable cost consequences of the reopener and attempt to adjust the total cost package accordingly. It is true it would be partly guesswork unless

he had all his conversion plans well worked out for the duration of the agreement. The worst that could happen to him would be the abandonment of his plan to introduce change because of the anticipated cost of avoiding a strike or of the expected strike itself. Business men are usually pretty good at this kind of calculation.

While it is true that an employer hopes to buy peace with the agreement, he can do so by agreeing in advance to a union request for a protective clause. But the employee who faces the calamity of redundancy has no recourse unless there is a bargained redundancy compensation of some sort, or a right of his union during the life of the agreement to negotiate and even strike on his behalf. Ross' mathematical illustration fails to take this logical behaviour of the employer as negotiator into account.

In what he calls the « fallacy of reopening for one item » Ross points to package deal bargaining. But this ignores the facts. In the first place, as pointed out above, the employer probably had included the anticipated cost in the original bargaining. Secondly, technological innovation is normally introduced as a cost reduction move which may mean that it can carry the redundancy cost without difficulty. A look at the experience of the United States west coast longshoring industry experience is impressive in this regard.

The argument that it might be better to accept the United States policy and remove the no-strike and no-lockout clause and the arbitration clause from the I.R.D.I. Act and similar provincial laws has much merit and the Task Force did give it serious consideration. It was rejected partly because of the deeply entrenched attitudes in this country among employers, many unions, and government officials in favour of the compulsory prohibition of the strike and lockout during the term of an agreement, and the strong sentiments in favour of compulsory arbitration of right disputes. But more important was the recognition of the timing of the introduction of change in relation to the time sequence of collective bargaining and the agreement.

In this respect it might be worth noting that the essence of the proposal of the Task Force has been included in the Nova Scotia Trade Union Act for many years. Section 23 (2) permits a strike or lockout over *any* contractually agreed reopener provided the necessary conciliation steps have been taken. The Task Force was not being particularly original in its proposal. It merely recommended that the Federal Act be relaxed with regard to the one issue.

The other arguments are not very significant. Partly they are based on the belief, already attached in this comment, that the members of the Task Force were attempting to give direction to the results of collective bargaining. Thus Ross states : « There is no guarantee that the negotiated technological change provision will strive to be efficient ». Of course there isn't, but there is a possibility that the opening up of alternatives will produce results more satisfactory to the parties of interest and with less frustration and illegal strike action than will flow from the present absolute prohibition of the strike and lockout and the imposition of compulsory arbitration including the restraint of non-arbitrability. Every bargaining area could be prohibited by legislation if the only needed justification were that there is no guarantee that the negotiated provision has striven to be efficient. Wage rates, seniority provisions, job posting and the whole gamut of substantive provisions of an agreement could be attacked under Ross' notion. The essence of collective bargaining is the freedom of the parties to agree to their own heaven or hell with as little public constraint as possible. It is in that context that the reopener proposal should be judged.

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